

**MINUTES OF THE JOINT EXECUTIVE APPROPRIATIONS
COMMITTEE MEETING**

September 14, 2010 at 1:00 P. M.

Room 445, State Capitol, State Capitol Complex

Members Present: Sen. Lyle W. Hillyard, Co-Chair
Rep. Ron Bigelow, Co-Chair
Rep. Bradley G. Last, Vice Chair
Sen. Daniel R. Liljenquist, Vice Chair
Rep. Douglas C. Aagard
Rep. David Clark, Speaker
Rep. Brad L. Dee
Sen. Scott K. Jenkins
Sen. Patricia W. Jones
Sen. Peter C. Knudson
Rep. Rebecca D. Lockhart
Sen. Karen Mayne
Rep. Carol Spackman Moss
Sen. Wayne L. Niederhauser
Sen. Luz Robles
Sen. Ross I. Romero
Sen. Michael G. Waddoups, President

Members Excused: Rep. James R. Gowans
Rep. David Litvack
Rep. Jennifer M. Seelig

Staff Present: Jonathan Ball, Legislative Fiscal Analyst
Steven Allred, Deputy Director
Greta Rodebush, Legislative Secretary

Speakers Present: John Nixon, Governor's Office of Planning and Budget
Fraser Bullock, Utah Advisory Commission to Optimize State Government
Becky Bruso, Governor's Office of Planning and Budget
Patrick Lee, Office of the Legislative Fiscal Analyst
Teresa Garrett, Utah Department of Health
Brent Everett, Utah Department of Environmental Quality
Bobie Tupou, Utah Labor Commission
Marc E. Babitz, Utah Department of Health
Dick Buehler, Utah Department of Natural Resources
Amanda Smith, Utah Department of Environmental Quality
Craig Silotti, Utah Department of Environmental Quality
Stephen Ogilvie, Utah Department of Agriculture and Food
John Reidhead, Utah Department of Administrative Services
Rich Amon, Office of the Legislative Fiscal Analyst
Mark Bleazard, Office of the Legislative Fiscal Analyst
John Njord, Utah Department of Transportation
Carlos Bracerias, Utah Department of Transportation

Note: A copy of related materials and an audio recording of the meeting can be found at www.leg.utah.gov.

A list of visitors and a copy of handouts are filed with the committee minutes.

1. Call to Order/Approval of Minutes

Co-Chair Bigelow called the meeting to order at 1:34 p.m. Rep. Gowans, Rep. Litvack, and Rep. Seelig were excused from the meeting.

MOTION: Co-Chair Hillyard moved to approve the minutes of the Joint Executive Appropriations Committee meeting on August 17, 2010. The motion passed unanimously with Sen. Niederhauser, Rep. Lockhart, and Rep. Moss absent for the vote.

2. Utah Advisory Commission to Optimize State Government

John Nixon, Executive Director, Governor's Office of Planning and Budget, introduced Fraser Bullock, Vice Chair, Utah Advisory Commission to Optimize State Government. In September 2009, Governor Gary Herbert asked the Commission to identify areas for increased efficiencies and effectiveness within Utah state government. The Commission was made up of business, prior government, and community leaders.

Fraser Bullock presented the Commission's findings and highlighted five of the report's fifty-eight recommendations.

Mr. Bullock explained that in order to improve government efficiency, the Commission looked at ways of reducing or eliminating waste and scope as well as ways to restructure government. The Commission recognized that it was more difficult to optimize state government given the current economic environment. While Utah has already cut millions of dollars from its budget, the state continues to face decreasing revenues and the demands of increasing student enrollment and public assistance caseload growth.

Mr. Bullock expanded upon the following recommendations: (1) Restructure state government to drive continued efficiency improvement; 2) systematically change the mix between state employee salary and benefits to better reflect private sector practices; 3) develop and implement a strategic plan for managing prison populations; 4) combat fraud, waste, and abuse through a statewide recovery audit initiative; and 5) leveraging technology in education to lower costs and improve outcomes.

President Waddoups asked about the Commission's proposal of running government like a business. Mr. Bullock stated government can utilize business principles in delivering services much like a business delivers products to customers. While government is not run for profit, it strives for efficiency and cost effectiveness in the use of public dollars.

Sen Jones asked for further comment on government waste and new ways to improve efficiency.

Mr. Bullock spoke on the merits of restructuring state government and institutionalizing operational oversight. He also pointed out that eliminating inefficient use of resources can eliminate waste.

Speaker Clark expressed his appreciation for the work of the Commission. He read a sentence from a letter written by Commission Chairman, Norman H. Bangerter, that says, "after careful review, the Commission has discovered that State government is already operating efficiently." The letter also expresses a commitment to do even better.

Speaker Clark asked what restructuring government might look like. Mr. Bullock stated that restructured government should include experienced operational people who drive oversight for all the state agencies.

Sen. Liljenquist, who served on the Commission, commented that on the revenue side, state government does act like a business. He stated that the recommendation to restructure and align incentives for efficiency in government may do more for the long term health of the state than any other thing we have considered. He stated that this issue warrants a coordinated discussion between the Legislature and the Executive Branch.

Sen. Mayne commented on the roles of state government and business in light of the work she is doing on a task force. She pointed out that we need to be aware that when a business goes broke, it shuts its doors and takes a tax break. Government cannot do this. Sen. Mayne thanked Mr. Bullock and the Commission for the model for state government and for their support for the departments.

Sen. Niederhauser stated that successful business principles such as performance-based budgeting, should be applied to state government.

3. Federal Funds/ARRA/Non-Federal Grants Reports

Federal Funds

Becky Bruso, Governor's Office of Planning and Budget, presented the Federal Funds Report through July 31, 2010. There were seven new grants and four reapplications of existing federal grants requiring legislative action. In addition, the Governor's Office approved fourteen new federal grants, three reapplications of existing grants, and one revision of an existing grant.

President Waddoups inquired about the Department of Health, Component II - Utah Enhanced Public Health Performance Management and Infrastructure Project, item 2 on page 5. The federal award is \$2,689,696 with no state match.

Teresa Garrett, Deputy Director, Public Health Practice, Department of Health, explained that money will be used to help local health departments implement performance improvement measures, upgrade health and performance evaluation databases, and support the statewide obesity prevention and elimination plan.

President Waddoups inquired about the Department of Environmental Quality, Flagstaff/Davenport Remedial Action Grant, item 3 on page 5. The federal award is \$2.5 million with a state match of \$278,000.

Brent Everett, Director, Division of Environmental Response and Remediation, explained that funding will be used to clean up soil contaminated with lead and arsenic from the smelter that operated historically at the mouth of Little Cottonwood Canyon. The EPA has already completed two removal actions on residential properties and public lands near the canyon benches.

President Waddoups inquired about the Labor Commission, 23G/State OSHA Plan, item 4 on page 5. The federal award is \$1,579,200 with a state match of \$1,579,200. He noted that both of these amounts are \$279,200 above what the Legislature approved during the 2010 General Session. President Waddoups wanted to know if the committee approved the additional amounts, would this action encumber FY 2012 General Fund monies without having the opportunity to prioritize them against other needs.

Bobie Tupou, Finance Manager, Utah Labor Commission, stated that the Labor Commission had overmatched this grant by \$174,000 and would use this amount along with monies from the Workforce Safety Fund (restricted account) to satisfy the state match.

President Waddoups asked about the Department of Health, National and State Background Checks for Direct Patient Access Employees of Long-Term Care Facilities and Providers, item 5 on page 5. The federal award is \$1.5 million with a state match of \$500,000.

Marc E. Babitz, Director, Division of Family Health and Preparedness, Department of Health, explained that the state match will be met using the salaries of individuals currently conducting criminal investigation background checks, and monies from the Civil Monies Penalties Fund (restricted federal account). He clarified that there will be no increase in health care licensing fees.

President Waddoups suggested that the history/background column for this grant show that the state match reflects existing salaries rather than surplus funds or fee increases.

President Waddoups inquired about Natural Resources, Community Protection on Priority Landscapes, item 6 on page 5. The federal award is \$475,000 with a state match of \$225,000 and a local match of \$250,000. The state match portion is provided from the annual General Fund fire suppression dollars. President Waddoups commented that the state is usually short on fire suppression dollars that require a supplemental request from the General Fund. He wanted to know if the state match will increase the supplemental request for fire suppression.

Dick Buehler, Director, Division of Forestry, Fire and State Lands, stated that this money will be used for pre-suppression and fuel mitigation activities on private lands that adjoin national forests. These efforts will help protect federal and private lands and reduce the likelihood that the Division will need to ask for supplemental appropriations to pay for fires. Mr. Buehler emphasized that the U.S. Forest Service needs to manage and maintain the national forests.

President Waddoups observed that two of the reapplications of existing grants needed approval for additional federal award and state match monies. He asked if the additional matching funds will encumber General Fund or other funding sources for the upcoming General Session.

Amanda Smith, Executive Director, Utah Department of Environmental Quality, spoke to the Performance Partnership Grant, item 1 on page 6, requiring legislative approval for an additional federal award of \$2,220,700 and state match of \$520,997. Ms. Smith stated that the state match would come from restricted accounts and General Fund monies being spent within the Department.

Craig Silotti, Finance Director, Utah Department of Environmental Quality, clarified that the state match represents General Fund monies being spent within the Division of Air Quality. The current General Fund appropriation to the Division is more than \$2 million, exceeding the match requirement for that program by more than \$500,000. The overmatch qualifies as a state match for the Performance Partnership Grant.

John Nixon, GOPB, clarified state matching requirements for federal funds. The federal government requires a state match to ensure that states do not diminish their support for these programs. The federal government allows states to use monies they are currently spending on existing programs as a maintenance of effort so that the agencies do not entirely supplant these programs with federal money.

Stephen Ogilvie, Director, Administrative Services, Department of Agriculture and Food, spoke to the Meat and Poultry Inspection Grant, item 3 on page 6, which requires legislative approval for an additional federal award of \$186,847 and state match of \$184,688. Mr. Ogilvie explained that the funding will be used to reimburse inspection plants that pay for overtime incurred by meat inspectors.

President Waddoups pointed out that these federal grants are growing government, much like the Education-Jobs (Edu-Jobs) program that many legislators do not support. He encouraged committee members to vote no on these grants.

ARRA

Ms. Bruso presented the ARRA Federal Funds Report. There was one new ARRA grant and no reapplications of existing grants requiring legislative action. The Governor's Office approved no new ARRA grants and no reapplications.

Speaker Clark inquired about the Department of Natural Resources, State Energy Efficient Appliance Rebate Program, federal award of \$2,336,221 with a local match of \$262,600. Ms. Bruso stated that the funds will pass through almost entirely to consumers who purchase new energy efficient appliances. Some money will be held back for auditing purposes.

Non-Federal Grants

Ms. Bruso presented the Non-Federal Grants Report. There were no new grants and no reapplications of existing grants requiring legislative action. The Governor's Office did not approve any new grants or reapplications of existing grants.

MOTION: Co-Chair Hillyard moved to recommend acceptance of the federal and ARRA grants as outlined on page 1, "Federal Funds Review and Approval" under the heading, "Grants Requiring EAC Review and Recommendation" and dated today, September 14, 2010. The motion passed with Sen. Jenkins and President Waddoups voting in opposition. Rep. Moss was absent for the vote.

4. Fiscal Year 2010 General/Education Fund Close-out

John Reidhead, Division of Finance, reported on the FY 2010 General/Education Fund close-out, referencing two handouts, "State of Utah Financial Highlights" and "General Fund and Education/School Fund Revenue Surplus, September 13, 2010."

Mr. Reidhead stated that the Fiscal Year 2010 surplus in the General Fund is \$14,891,000, and the shortfall in the Education Fund is \$42,679,000 for a combined total of a \$27,788,000 deficit. These numbers are preliminary and subject to audit by the State Auditor.

Mr. Reidhead briefly discussed the Budgeted and Net Reserves available for Fiscal Year 2011 and other financial highlights including major state revenue sources and program expenditures, highway construction and operations, General Obligation bonds, and the status of selected funds.

Rich Amon, LFA, presented the issue brief, "FY 2010 Preliminary Lapsing and Nonlapsing Balances."

Mr. Amon discussed Table 1 on page 2 that includes the FY 2009 and FY 2010 Nonlapsing Balances as well as the FY 2010 Lapsing Balances. He noted that in FY 2010, \$21 million will lapse back to the General Fund to offset the revenue deficits.

Mr. Amon noted that Figures 1 through 10 illustrate the historical trends of nonlapsing balances by appropriations subcommittee.

5. Fiscal Year 2010 Restricted Funds Close-out

Rich Amon, LFA, presented the "FY 2010 Fund Balances Report."

Mr. Amon reiterated that these numbers are preliminary and are subject to change and to audit.

Sen. Jones asked if the money from the Edu-Jobs bill can be used to fill the budget gap. Co-Chair Bigelow stated that Sen. Jones question would be answered upon completion of the next agenda item.

6. Transportation Bond Issuance

Mark Bleazard, LFA, stated that under provisions of Title 72-2-125 UCA, the Legislature authorized bonding of \$1.2 billion for critical highway needs in the state. Under provisions of Title 63B-18-401 UCA, the Legislature further authorized bonding of \$2.2 billion for I-15 in Utah County, Mountain View Corridor, and the Southern Parkway.

Mr. Bleazard stated that the Department is required to appear before the Executive Appropriations Committee to present a list of projects and the amount of bond proceeds needed prior to issuing bonds in any fiscal year.

John Njord, Executive Director, Utah Department of Transportation (UDOT), presented the prioritized list of projects and bonding requirements for FY 2011 as found in the handout, "Utah Department of Transportation Bonding Summary." He stated that the bonding needs for FY 2011 are \$985 million, \$422 to the Critical Highway Needs Fund, and \$562 million to the Transportation Investment Fund. In the interest of time, Mr. Njord did not review the list of highway projects currently under construction within the programs. He concluded his remarks by noting that the State of Utah had once again received an AAA bond rating.

Committee Discussion

Sen. Jones asked UDOT to comment on the \$13 million that UDOT paid out on the I-15 project in Utah County.

Mr. Njord stated that UDOT paid \$13 million to the losing bidder on the I-15 project in order to compensate the bidder for actual expenses incurred in developing the bid for the project. He stated that this was a business decision. The Department wanted to avoid any prolonged litigation that could have derailed the I-15 project and could have cost UDOT an estimated \$70 million. As per contracts, Mr. Njord explained that a third bidder received a \$1.5 million stipend and agreed to give up the right to protest.

Carlos Braceras, Deputy Director, UDOT, stated that the decision was not reached lightly and that it was a business decision. The Department analyzed the risks to determine how to best move forward with the I-15 job. He stated that UDOT has already benefitted from the intellectual property as evidenced in the improved designs in two major interchanges.

Mr. Njord commented that resolving a potential lawsuit has allowed UDOT to move forward and produce a better project.

Sen. Romero stated that he did not think that the State should be in the process of negotiating settlements. The Attorney General's Office should defend the State's position in matters such as this. He felt that as a member of Leadership, he should have been made aware of the proposed settlement.

Rep. Lockhart stated that it was her understanding that there was no lawsuit, but rather, the threat of a lawsuit. This was not a settlement and did not have to come before the Legislature. The \$13 million is part of the project's existing budget and is not a new appropriation.

Mr. Njord confirmed that Rep. Lockhart's statements were accurate. He said that UDOT anticipated that it would have difficulties within this project, and set aside a contingency amount to deal with this issue and other issues that might have arisen during the completion of the project. Mr. Njord stated that he was confident that UDOT will deliver this project on time and under budget.

President Waddoups suggested that in referring to the use of the other bidders' designs that Mr. Njord refer to the designs as those purchased from other bidders.

Speaker Clark recognized that this was a business decision that UDOT made without input from the Legislature. He pointed out, however, that statute allows UDOT to make these kinds of decisions. He referred to the Legacy Parkway that was a \$451 million bid and ended up costing closer to \$700 million due to litigation. If the I-15 project had been enjoined, the cost may have exceeded \$50 million. He stated that an interstate twice the size of the original project, a two and one-half year project as opposed to a four-year project, four lanes of highway instead of two, moderate his frustration with the process. Lessons have been learned.

7. Other Business

Jonathan Ball, LFA, responded to Sen. Jones' question as to whether or not Edu-Jobs funding can be used to fill the budget gap. Mr. Ball stated that according to the U.S. Department of Education, districts can use Edu-Jobs funding to maintain current staffing levels as long as it goes toward compensation. So yes, Edu-Jobs can probably be used to fill holes in the Education Fund.

Co-Chair Bigelow recognized Co-Chair Hillyard for a motion.

MOTION: Co-Chair Hillyard moved to adjourn. The motion passed unanimously Rep. Dee absent for the vote.

Co-Chair Bigelow adjourned the meeting at 3:12 p.m.